

First Report of the
Senate Interim Committee on Medicaid
Accountability and Taxpayer Protection



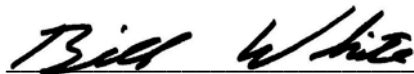
September 23, 2021

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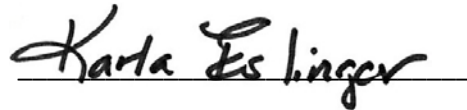
The Honorable Dave Schatz, President Pro Tempore
State Capitol Building
Jefferson City, Missouri 65101

Dear President Pro Tempore Dave Schatz:

The Senate Interim Committee on Medicaid Accountability and Taxpayer Protection, acting according with its charge, has met, taken testimony, deliberated, and concluded its study on issues relating to Missouri's MO HealthNet program and the protection of unborn life. The committee now presents to the Missouri Senate a report of the committee's activities and actions to date.



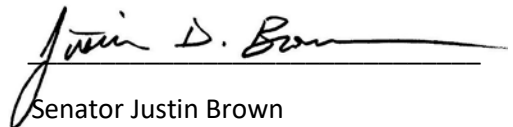
Senator Bill White, Chair



Senator Karla Eslinger, Vice-Chair



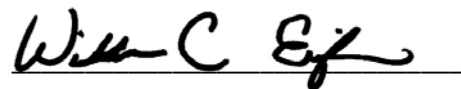
Senator Mike Bernskoetter



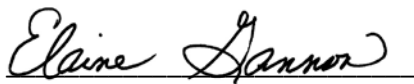
Senator Justin Brown



Senator Mike Cierpiot



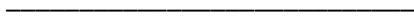
Senator Bill Eigel



Senator Elaine Gannon



Senator Lauren Arthur



Senator Karla May



Senator Jill Schupp

Pursuant to Senate Rule 31, President Pro Tempore Dave Schatz established the Senate Interim Committee on Medicaid Accountability and Taxpayer Protection on June 30, 2021. The duties of the committee were to conduct in-depth studies and make appropriate recommendations concerning the MO HealthNet program, the protection of unborn human life, and ensuring Missouri tax dollars are spent in accordance with the values of Missourians. The President authorized the committee to solicit input and information necessary to fulfil its obligations from the appropriate state departments and agencies. This report will summarize the activities of the committee to date concerning its findings on the funding of abortion providers and their family planning affiliates through MO HealthNet, the state's Medicaid program.

The committee held three public hearings relating to the funding of abortion providers and their family planning affiliates through MO HealthNet. The first hearing was held on July 13, 2021, at the State Capitol Building in Senate Committee Room #1. After calling the meeting to order, Chairman White discussed the purpose and goals of the committee, as well as plans for the committee to consider future topics involving Medicaid transparency and accountability, including funding, fraud and auditing, information systems, service provision, and managed care. Regarding the subject of the current meeting, Chairman White outlined the matter of the extent to which abortion facilities, through the provision of non-abortion services, received taxpayer dollars through MO HealthNet. The committee examined claims data provided by the MO HealthNet Division for Planned Parenthood and affiliated providers for MO HealthNet services (See Appendix A). Additionally, Chairman White discussed restrictions in federal Medicaid law, including the requirement that Medicaid beneficiaries have the right to obtain services from any provider qualified to perform that service who undertakes to provide such services to beneficiaries. This "any willing provider" provision does not limit the state's ability to determine what qualifies a provider if such qualifications are related to the fitness of the provider to perform the covered medical services. Committee members expressed interest in exploring how the state determines provider qualifications.

This hearing was also an informational hearing to receive testimony from Robert Knodell of the Department of Health and Senior Services (DHSS) and Jennifer Tidball of the Department of Social Services (DSS) concerning proposed rules designed to ensure that abortions are not funded, directly or indirectly, through MO HealthNet and taxpayer dollars. Acting Director Tidball testified that the proposed rules would allow DSS to take action against providers on the basis of investigations conducted by DHSS in the course of its inspections of abortion facilities, without further investigation needed by DSS; provided the DHSS inspection found deficiencies or violations that would rise to the level of a sanction under the MO HealthNet program. Acting Director Knodell noted that these proposed rules would allow both Departments to act more efficiently and share information without requiring duplicative investigations. Both acting directors stated that the timeline for promulgation of these proposed rules would depend on the committee's feedback and recommendations.

The second hearing was held on August 4, 2021, at the State Capitol in Senate Committee Room #1, for the purpose of receiving public testimony on state funding received by abortion providers and their family planning affiliates. The committee members heard testimony from nearly forty individuals in opposition to or in support of continuing to provide MO HealthNet funding to entities such as Planned Parenthood. At the conclusion of the hearing, the committee members discussed producing a report summarizing their findings and recommendations on this issue and a second report at the end of the year regarding additional Medicaid transparency and reform recommendations.

The final hearing on this issue was held on September 23, 2021, at the State Capitol in Senate Committee Room #1, for the purpose of discussing the committee report. No public testimony was received. The committee discussed the proposed draft of the first committee report and expressed their support or concerns and suggestions. Chairman White noted that a second report would be produced at the end of the committee's work addressing other issues involving Medicaid transparency and reform. The committee ended with an agreement to meet in October to continue examining the MO HealthNet program.

Recommendations

After review and consideration of the testimony presented by DHSS, DSS, and the general public, the committee recommends the following statutory and regulatory changes, consistent with the values of Missourians as expressed by the General Assembly in Section 1.205 that life begins at conception and unborn children have protectable interests in life, health, and well-being, as well as in Section 188.026.5 that Missouri has an interest in protecting unborn children throughout pregnancy and ensuring respect for all human life from conception to natural death.

- I. **Regulatory changes.** During the July 13 hearing, DHSS and DSS presented proposed rules to permit DHSS to share with DSS information uncovered in the course of its duties inspecting DHSS-licensed facilities in order to avoid duplicative investigations by DSS in the course of its duties investigating Medicaid provider qualifications. While the committee commends the Departments on seeking ways to efficiently and effectively share information and reduce redundant bureaucratic procedures that cost time and taxpayer dollars, the committee recommends that the Departments modify or expand the proposed rules to include a broader consideration of what qualifies a MO HealthNet provider. Federal regulation and guidance has suggested that states have the authority in their Medicaid programs to establish qualification standards for Medicaid providers and to take action against providers that fail to meet those standards. Those standards must be related to the fitness of the provider to provide covered Medicaid services.
 - a. Missouri law in Section 208.164 already lays out the framework for considering evidence of fraud, abuse, and false billing practices when determining whether a health care provider is qualified to be or remain as a MO HealthNet provider. State regulation in 13 CSR 70-3.030 further details over forty other grounds under which providers may be sanctioned or terminated, including improper record documentation and retention practices; failing to provide and maintain quality, necessary, and appropriate services;

breaching the provider agreement with MO HealthNet; failing to correct deficiencies as uncovered by the state licensing authority; and violating any laws, regulations, and codes of ethics, including Missouri law, where the violation is reasonably related the provider's qualifications, functions, or duties or where an element of the violation is fraud, dishonesty, moral turpitude, or an act of violence.

- b. As Missouri statute and regulation has already put into place precedent for considering an expansive array of fraud, abuse, ethical, and other regulatory and licensing violations when determining whether a provider is qualified to serve as a MO HealthNet provider, the committee urges DSS and DHSS to collaborate on modifying and expanding these existing rules to incorporate consideration by DSS of any violations of state law, including Chapter 188, relating to abortion facilities that establish, in their totality, an ongoing pattern of violations sufficient to rise to the level of sanctions by DSS and possible termination as a MO HealthNet provider. These violations of state law may include failure to ensure informed patient consent, failure to retain medical records, failure to cooperate with DHSS during an investigation, failure to ensure adequate facilities and sterilized equipment, and failure to provide required printed materials to women referred to an out-of-state abortion facility under Section 188.033. By incorporating the proposed rules presented by DHSS and DSS in the July 13 meeting, DHSS can share information uncovered during inspections and investigations of abortion facilities in the course of its purview as the state licensing entity for abortion facilities. DSS can then consider whether the statutory and regulatory violations as reported by DHSS present a pattern of violations such that demonstrates a lack of qualifications to serve as a MO HealthNet provider without the need to conduct additional investigations itself.

- c. The committee strongly urges the Departments to act expeditiously with respect to these regulatory recommendations and to promulgate emergency rules. The committee feels such emergency rules are necessary to effectuate the state's compelling interest, as repeatedly expressed in statute, to ensure the health, safety, and welfare of Missourians, in all stages of life, through the provision of safe and quality health care.
- II. **Statutory changes.** The committee also recommends statutory changes to Section 208.164. Testimony presented during the public hearing on August 4 brought to the committee's attention the work done in Texas and Arkansas to remove Planned Parenthood as a Medicaid provider in those states on the basis of ethical violations that made that entity unqualified to serve as a Medicaid provider. Upon consideration, the committee recommends adding the following language to Section 208.164, a statute that governs grounds for sanctioning or terminating MO HealthNet providers:

"208.164.10. The department or its divisions shall have the authority to suspend, revoke, or cancel any contract or provider agreement or refuse to enter into a new contract or provider agreement with any provider where it is determined that the provider, or any affiliate or associate thereof, has committed fraud, abuse, or unethical behavior and has been removed or prohibited from being a Medicaid provider in another state's Medicaid program; provided, that such fraud, abuse, or unethical behavior, if it had occurred in this state, would be grounds for suspension, revocation, cancellation, or refusal to enter into a contract or provider agreement as a MO HealthNet provider."

It is the committee's recommendation to make this change to provide DSS the tools necessary for DSS to consider a provider's behavior in another state as grounds for sanctions or termination if such behavior would disqualify it from serving as a MO HealthNet provider in this state. The committee feels

that Missouri should have the ability to determine the qualifications of a MO HealthNet provider from the totality of the circumstances, including the provider's conduct outside of Missouri.

SFY 2017-2021 (YTD) Claims Data By FCOS										Date of Service for Claims Submitted in SFY 2021 (YTD) Claims Data By FCOS					
Provider NPI	Provider Name	FCOS	FCOS Description	2017	2018	2019	2020	2021 (YTD)	Grand Total	2017	2018	2019	2020	2021 (YTD)	Grand Total
1184686511	REPRODUCTIVE HEALTH SERVICES	15	Clinic Services	\$ 98.29	\$ 69.31	\$ -	\$ -	\$ -	\$ 167.60	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
		70	Pharmacy Services	\$ 11,662.97	\$ 10,296.58	\$ 1,099.49	\$ -	\$ 753.00	\$ 23,812.04	\$ -	\$ -	\$ 687.00	\$ 66.00	\$ -	\$ 753.00
1184686511 Total	REPRODUCTIVE HEALTH SERVICES TOTAL			\$ 11,761.26	\$ 10,365.89	\$ 1,099.49	\$ -	\$ 753.00	\$ 23,979.64	\$ -	\$ -	\$ 687.00	\$ 66.00	\$ -	\$ 753.00
1205898574	PLANNED PARENTHOOD OF ST LOUIS REGION	15	Clinic Services	\$ 123,113.82	\$ 77,952.06	\$ 9,220.33	\$ -	\$ 66,758.44	\$ 277,044.65	\$ -	\$ -	\$ 26,720.81	\$ 23,291.73	\$ 16,745.90	\$ 66,758.44
		36	Nurse Midwife	\$ 3,088.59	\$ 8,028.83	\$ 1,194.40	\$ -	\$ 7,004.90	\$ 19,316.72	\$ -	\$ -	\$ 3,075.64	\$ 2,040.19	\$ 1,889.07	\$ 7,004.90
		70	Pharmacy Services	\$ 108,118.72	\$ 94,031.42	\$ 9,905.60	\$ -	\$ 334,714.59	\$ 546,770.33	\$ -	\$ -	\$ 75,689.07	\$ 79,829.21	\$ 179,196.31	\$ 334,714.59
1205898574 Total	PLANNED PARENTHOOD OF ST LOUIS REGION TOTAL			\$ 234,321.13	\$ 180,012.31	\$ 20,320.33	\$ -	\$ 408,477.93	\$ 843,131.70	\$ -	\$ -	\$ 105,485.52	\$ 105,161.13	\$ 197,831.28	\$ 408,477.93
1336282573	COMPREHENSIVE HEALTH OF PLANNED	15	Clinic Services	\$ -	\$ -	\$ -	\$ -	\$ 204.50	\$ 204.50	\$ -	\$ -	\$ -	\$ 112.63	\$ 91.87	\$ 204.50
		70	Pharmacy Services	\$ 81.46	\$ 465.93	\$ 27.65	\$ -	\$ 2,163.96	\$ 2,739.00	\$ -	\$ -	\$ 191.95	\$ 83.28	\$ 1,888.73	\$ 2,163.96
1336282573 Total	COMPREHENSIVE HEALTH OF PLANNED TOTAL			\$ 81.46	\$ 465.93	\$ 27.65	\$ -	\$ 2,368.46	\$ 2,943.50	\$ -	\$ -	\$ 191.95	\$ 195.91	\$ 1,980.60	\$ 2,368.46
1679614838	PLANNED PARENTHOOD GREAT PLAINS	15	Clinic Services	\$ 12,200.56	\$ 17,202.94	\$ 2,225.81	\$ -	\$ 14,404.28	\$ 46,033.59	\$ -	\$ (14.87)	\$ 3,921.82	\$ 6,325.98	\$ 4,171.35	\$ 14,404.28
		36	Nurse Midwife	\$ 344.08	\$ 1,692.03	\$ 121.01	\$ -	\$ 789.61	\$ 2,946.73	\$ -	\$ -	\$ 252.46	\$ 361.49	\$ 175.66	\$ 789.61
		70	Pharmacy Services	\$ 109,445.88	\$ 192,150.17	\$ 6,081.03	\$ -	\$ 255,103.19	\$ 562,780.27	\$ -	\$ -	\$ 57,639.70	\$ 78,849.31	\$ 118,614.18	\$ 255,103.19
1679614838 Total	PLANNED PARENTHOOD GREAT PLAINS TOTAL			\$ 121,990.52	\$ 211,045.14	\$ 8,427.85	\$ -	\$ 270,297.08	\$ 611,760.59	\$ -	\$ (14.87)	\$ 61,813.98	\$ 85,536.78	\$ 122,961.19	\$ 270,297.08
FCOS Total		15	Clinic Services	\$ 135,412.67	\$ 95,224.31	\$ 11,446.14	\$ -	\$ 81,367.22	\$ 323,450.34	\$ -	\$ (14.87)	\$ 30,642.63	\$ 29,730.34	\$ 21,009.12	\$ 81,367.22
FCOS Total		36	Nurse Midwife	\$ 3,432.67	\$ 9,720.86	\$ 1,315.41	\$ -	\$ 7,794.51	\$ 22,634.45	\$ -	\$ -	\$ 3,328.10	\$ 2,401.68	\$ 2,064.73	\$ 7,794.51
FCOS Total		70	Pharmacy Services	\$ 229,309.03	\$ 296,944.10	\$ 17,113.77	\$ -	\$ 592,734.74	\$ 1,136,101.64	\$ -	\$ -	\$ 134,207.72	\$ 158,827.80	\$ 299,699.22	\$ 592,734.74
Grand Total				\$ 368,154.37	\$ 401,889.27	\$ 29,875.32	\$ -	\$ 681,896.47	\$ 1,481,815.43	\$ -	\$ (14.87)	\$ 168,178.45	\$ 190,959.82	\$ 322,773.07	\$ 681,896.47

SFY 2017-2021 (YTD) Financial Transactions (Payout Recoup Special Checks) by Financial Transaction Code									
Provider NPI	Fin Trans Cd	Fin Trans Cd Description	2017	2018	2019	2020	2021 (YTD)	Grand Total	
1184686511	REC	Recoupment Record	\$ -	\$ -	\$ (1,099.49)	\$ -	\$ (657.98)	\$ (1,757.47)	
1184686511 Total			\$ -	\$ -	\$ (1,099.49)	\$ -	\$ (657.98)	\$ (1,757.47)	
1205898574	PAY	Payout	\$ -	\$ -	\$ -	\$ -	\$ 2,057.86	\$ 2,057.86	
	REC	Recoupment Record	\$ -	\$ -	\$ (20,320.33)	\$ -	\$ (93,217.76)	\$ (113,538.09)	
	SPC	Provider Special Payout	\$ -	\$ 6,449.70	\$ -	\$ -	\$ 90,598.87	\$ 97,048.57	
1205898574 Total			\$ -	\$ 6,449.70	\$ (20,320.33)	\$ -	\$ (561.03)	\$ (14,431.66)	
1336282573	REC	Recoupment Record	\$ -	\$ (78.93)	\$ (27.65)	\$ -	\$ -	\$ (106.58)	
1336282573 Total			\$ -	\$ (78.93)	\$ (27.65)	\$ -	\$ -	\$ (106.58)	
1679614838	REC	Recoupment Record	\$ -	\$ (4,582.77)	\$ (8,427.85)	\$ -	\$ -	\$ (13,010.62)	
	SPC	Provider Special Payout	\$ -	\$ 339.04	\$ -	\$ -	\$ -	\$ 339.04	
1679614838 Total			\$ -	\$ (4,243.73)	\$ (8,427.85)	\$ -	\$ -	\$ (12,671.58)	
Grand Total			\$ -	\$ 2,127.04	\$ (29,875.32)	\$ -	\$ (1,219.01)	\$ (28,967.29)	

SFY 2017-2021 (YTD) Net Pay (Claims+(Payout Recoup Special Checks))									
Provider NPI	2017	2018	2019	2020	2021 (YTD)	Grand Total			
1184686511	\$ 11,761.26	\$ 10,365.89	\$ -	\$ -	\$ 95.02	\$ 22,222.17			
1205898574	\$ 234,321.13	\$ 186,462.01	\$ -	\$ -	\$ 407,916.90	\$ 828,700.04			
1336282573	\$ 81.46	\$ 387.00	\$ -	\$ -	\$ 2,368.46	\$ 2,836.92			
1679614838	\$ 121,990.52	\$ 206,801.41	\$ -	\$ -	\$ 270,297.08	\$ 599,089.01			
Grand Total	\$ 368,154.37	\$ 404,016.31	\$ -	\$ -	\$ 680,677.46	\$ 1,452,848.14			

*Above summary represents the Dates of Service SFY for claims that were processed in SFY 2021